

From: [Axe, Al](#)
To: [Brian Darnell](#); [Sonja A.](#); ['Cermak, John F.'](#)
Cc: [Anne Foster/R6/USEPA/US@EPA](#); [Garyg Miller/R6/USEPA/US@EPA](#); [Robert Werner/R6/USEPA/US@EPA](#); [Jessica Hernandez/R6/USEPA/US@EPA](#)
Subject: RE: Restricted Access To The San Jacinto River Fleet (SJRF) Property Restricted Areas
Date: 10/31/2011 02:32 PM

Brian,

Thank you for agreeing to provide access to MIMC and International Paper (Respondents), EPA, and their employees, agents and representatives pursuant to the conditions set out in your attached email of October 14, 2011. Based on discussions with our Project Manager and others, we have concerns or questions regarding several of the conditions. The primary concern raised by the conditions you identified is the requirement for a Transportation Worker Identification Credential (TWIC). According to your email, it appears that SJRF proposes to require that any person entering into the restricted area of the SJRF facility have a TWIC, even though that person would be escorted by a SJRF employee. The other concerns/questions relate to the notice period and the potential need for access under emergency conditions or on less than seven days' notice, as well as questions regarding the basis for the escort fee and the areas of the property that would be considered "restricted." The basis for our concerns and questions are described in more detail below.

Also, you mention in your email that the Facility Security Plan will supersede the access agreement in the event that an interpretation dispute arises. Could you please send us a copy of the FSP for our review? We will need to make sure that EPA finds this access agreement to be acceptable. I will be following up with Jessica Hernandez with respect to this issue.

TWIC Requirement. The requirement that every person entering restricted areas of the SJRF property have a TWIC raises the following concerns:

1. Although our Project Manager has a TWIC, as do a number of other employees of his company, Anchor QEA, many of the individuals who might be needed to perform sampling, surveying or other work under his direction either on the SJRF property or in the nearshore environment would not. For example, if we needed to hire a drilling contractor to collect soil or groundwater samples, it is doubtful the contractors employees would have TWIC cards. This requirement could unreasonably limit the resources we can utilize, particularly if a time sensitive issue were to arise and there was not time to locate personnel with a TWIC to perform the needed tasks.

2. There is a significant amount of time and expense associated with obtaining a TWIC: one must travel to a specified TWIC enrollment center and apply in person, be fingerprinted, photographed, and interviewed. One must return to the same enrollment center when notified to actually pick up the approved TWIC credential, in person. The credential is expected to cost \$140 per ID card. It belongs to the employee, not the company. We also understand that it can take 4-6 weeks to go through the process of obtaining a TWIC card.



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3. It appears that many of the employees of Anchor or its subcontractors would not qualify for a TWIC card since they will not be performing unescorted work at the SJRF facility. For example, see http://www.tsa.gov/what_we_do/layers/twic/index.shtm:

a. Can employers require their employees to enroll for a TWIC even if their job does not require them to have unescorted access to facilities and vessels regulated by Maritime Transportation Security Act (MTSA)? (homeport.uscg.mil)

i. No. All applicants must certify that they need a TWIC to perform their job. Applicants either have to currently be, or are applying to be, a port worker requiring unescorted access to secure areas of maritime facilities and vessels regulated by MTSA; or they are a commercial HME driver licensed in Canada or Mexico. Applicants also certify that the information they provide during the enrollment process is true, complete, and correct. If required, civil or criminal action may be taken if an individual provides false statements (per 49 CFR 1570.5 and 18 U.S.C. 1001). (homeport.uscg.mil).

b. When will I be required to have a TWIC?

i. All workers who require unescorted access to secure areas of maritime facilities and vessels and all U.S. credentialed mariners are required to have a TWIC.

c. Who must get a TWIC?

i. Coast Guard-credentialed merchant mariners, port facility employees, long shore workers, truck drivers, and others requiring unescorted access to secure areas of maritime facilities and vessels regulated by MTSA are required to get a TWIC. (homeport.uscg.mil)

Since a SJRF employee will be escorting the Respondents' contractor and subcontractor employees, it appears that the relevant rules do not require that they have a TWIC. Moreover, it appears that they could not obtain a TWIC because of the application requirements discussed in "a." above.

In light of these considerations, we request that you reconsider this particular requirement. We are willing to consider other options such as a requirement that anyone in a supervisory role for the Respondents would have a TWIC card, but support crews could be allowed on the SJRF property as long as they were accompanied by the SJRF escort and a TWIC-card carrying supervisor for the Respondents. Please let us know if this proposal is acceptable.

Pre-Entry Notice Requirement. In most instances, we may be able to provide seven days' notice of a request for entry, but would propose that the minimum notice period be three days. In the event of an emergency or exigent circumstances, it might be necessary for access on shorter notice and we would request that the access agreement make provision for access in such circumstances.

Escort Expense and Delineation of Restricted Areas. Can you please explain the basis for the

\$96 per hour escort expense? Can you also delineate the areas of the property that are "restricted."

I look forward to hearing from you regarding the above issues and to receiving a copy of the Facility Security Plan.

Thanks. Al

Albert R. Axe, Jr.

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profile link: <http://www.winstead.com/Attorneys/aaxe>

From: Brian Darnell [mailto:briandarnell@sjrfleet.com]
Sent: Friday, October 14, 2011 2:27 PM
To: Axe, Al; 'Sonja A.'; 'Cermak, John F.'
Cc: Foster.Anne@epamail.epa.gov; Miller.Garyg@epamail.epa.gov; Werner.Robert@epamail.epa.gov; Hernandez.Jessica@epamail.epa.gov; 'Paul Wild'; 'Mark Brotherton'; 'Desmaine "Dee" Rubin'; jakekelly@cherylkinc.com; dispatch@sjrfleet.com
Subject: Restricted Access To The San Jacinto River Fleet (SJRF) Property Restricted Areas

Al,

The following guidelines will be adhered to for access to the restricted areas of the San Jacinto River Fleet (SJRF) property. The Facility Security Plan (FSP) will supersede this agreement in the event that an interpretation dispute arises. **WARNING This record contains Sensitive Security Information that is controlled under 49 CFR parts 15 and 1520. No part of this record may be disclosed to persons without a "need to know," as defined in 49 CFR parts 15 and 1520, except with written permission of the Administrator of the Transportation Security Administration or the Secretary of Transportation. Unauthorized release may result in civil penalty or other action. For U.S. government agencies, public disclosure is governed by 5 U.S.C. 552 and 49 CFR parts 15 and 1520.**

1. Any person entering into the restricted areas of the SJRF shall have in their possession, at all times, a valid Transport Workers Identification Credential (TWIC) issued by proper authority to the person who holds the identification;
2. Any person entering into the restricted areas of the SJRF shall consent to screening and search at any time;
3. Request for entry shall be made via email to briandarnell@sjrfleet.com and copied to dispatch@sjrfleet.com seven (7) business days prior to entry;
4. Entry requests shall state the requested date, time, name of persons requiring entry, vehicles entering with license plate number, billing details of responsible party, purpose with EPA preapproved specific instructions;
5. Email access approval shall be granted by Brian Darnell, Facility Security Officer, Desmaine Rubin, Alternate Facility Security Officer, or Jake Kelly, Alternate Security Officer once requirements have been met;
6. If the aforementioned requirements are not met access will be denied;
7. Once an access approval has been granted a SJRF escort will be assigned;
8. Escort expense shall be \$96.00 per hour;

9. The escort will ensure security protocols are adhered to, and scope of EPA preapproved specific instructions are not exceeded;
10. Current threat levels of security have the SJRF operating at MARSEC Level I;
11. Once SJRF is instructed to maintain MARSEC Level II, entry will be further restricted or denied;
12. Once SJRF is instructed to maintain MARSEC Level III entry will be denied indefinitely until instructed by the Office of Homeland Security.

I believe this will cover your requests. If you have any further questions or desire additional information please do not hesitate to contact this office.

Respectfully,
Brian Darnell
Vice President & Facility Security Officer (FSO)
San Jacinto River Fleet, L.L.C.

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From: Axe, Al [mailto:aaxe@winstead.com]
Sent: Thursday, October 13, 2011 3:38 PM
To: 'Brian Darnell'
Cc: 'Sonja A.'; 'Cermak, John F.'; 'Hernandez.Jessica@epamail.epa.gov'
Subject: FW: Meeting with EPA on 10/6

Brian,

This is to followup on the attached email that I sent to you last Friday, October 7, 2011. Please let us know when you are available to discuss the access requirements related to the rest of the San Jacinto River Fleet property located at the San Jacinto River and I-10. Your attention to this matter will be greatly appreciated. Thanks. Al

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From: Axe, Al
Sent: Friday, October 07, 2011 1:23 PM
To: 'Brian Darnell'
Cc: 'Hernandez.Jessica@epamail.epa.gov'; 'Inglin, Sonja A.'; 'Cermak, John F.'
Subject: RE: Meeting with EPA on 10/6

Brian,

Thanks for your email. We also received an email from Jessica this morning asking us to followup with you regarding obtaining access to the San Jacinto River Fleet property. We will need access to the Department of Homeland Security portion of the property as well as the strip of SJRF property indicated in the attachment to your email. Please let us know what is required to obtain access to the restricted portion of your property so that we can make appropriate arrangements. Thank you for your assistance. Al

Albert R. Axe, Jr.

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From: Brian Darnell [mailto:briandarnell@sjrfleet.com]
Sent: Friday, October 07, 2011 11:46 AM
To: Axe, Al
Cc: Hernandez.Jessica@epamail.epa.gov
Subject: FW: Meeting with EPA on 10/6

Al:

We met with the EPA Region 6 representatives yesterday in their offices in Dallas, and we now understand fully what type of access you are required to have and **we are prepared to grant this access.** Via this email, International Paper Company and McGinnis Industrial Management Corporation have the right-to-enter immediately, study and conduct whatever type testing that the EPA orders, within the strips and gores of property that are adjacent to the TXDOT right-of-way that are outside of the Office of Homeland Security Restricted areas. I have enclosed a visual representation of the areas where access is granted. Yellow represents areas where "access granted," and pink represents an area where we believe the Port of Houston Authority maintains control and ownership.

Respectfully,
Brian Darnell
Vice President & Facility Security Officer (FSO)
San Jacinto River Fleet, L.L.C.

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From: Hernandez.Jessica@epamail.epa.gov [mailto:Hernandez.Jessica@epamail.epa.gov]
Sent: Thursday, October 06, 2011 4:51 PM
To: Brian Darnell
Cc: Foster.Anne@epamail.epa.gov
Subject: Meeting with EPA on 10/6

Hi Brian---

Thank you again for taking the time to meet with us today, it was very informative and encouraging.

Per our discussion, International Paper Company and McGinnes Industrial Management Corporation (MIMC) will be attempting to an secure access agreement with SJ River Fleet (SJRF). Although there is no upcoming work scheduled for the SJRF property, we feel this is an appropriate precaution should future sampling or other response measures be necessary under the Administrative Order on Consent and/or the Unilateral Administrative Order for Remedial Investigation/Feasibility Study. After speaking today, EPA is aware of the procedural sensitivities (especially the time it may take to push an access agreement through the approval process) attendant to dealing with an Office of Homeland Security, secured facility.

Again thank you for time, please feel free to give myself or Anne Foster a call if you have any questions.

Jessica

Jessica Hernandez
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